

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MCARTHUR GHOLSTON,

Defendant-Appellant.

UNPUBLISHED

September 11, 2003

No. 240810

Kent Circuit Court

LC No. 01-009473-FC

Before: Cooper, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of unarmed robbery, MCL 750.530, and was sentenced to a prison term of four to fifteen years. Defendant appeals as of right. We affirm.

On appeal, defendant argues that he is entitled to resentencing because the trial court erred in scoring the legislative sentencing guidelines variables, and because his sentence violates the principle of proportionality.

Defendant challenges the scoring of offense variables 1, 2, and 8. A sentencing court has discretion to determine the number of points to be scored, provided that record evidence adequately supports a particular score. Scoring decisions for which there is any supporting evidence will be upheld. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Application of the statutory sentencing guidelines presents a question of law that this Court reviews de novo. *People v Libbett*, 251 Mich App 353, 365; 650 NW2d 407 (2002).

Subsection (1)(d) of MCL 777.31, which concerns aggravated use of a weapon, directs a sentencing court to assess five points for OV 1 if a “weapon was displayed or implied.” Here, a complainant testified that defendant had his hand inside his shirt during the robbery, giving the impression that he was carrying a gun. This evidence supported the trial court’s scoring of OV 1.

MCL 733.32(1)(c), which concerns the lethal potential of the weapon possessed, directs a sentencing court to assess five points for OV 2 if the offender “possessed a pistol, rifle, shotgun, or knife or other cutting or stabbing weapon.” MCL 733.32(2) provides that in “multiple offender cases, if 1 offender is assessed points for possessing a weapon, all offenders shall be assessed the same number of points.” Here, a gun was found on the ground between defendant

and the other perpetrator. The trial court noted that the other perpetrator admitted when he pleaded guilty that it was his gun. The evidence supports the trial court's scoring of OV 2.

MCL 777.38(1)(a), which concerns victim asportation, directs a sentencing court to score fifteen points for OV 8 if a "victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense." Defendant argues the trial court erred by scoring OV 8 at fifteen points for the reason that no evidence showed that by taking the complainants to the back room he took them to a place or situation of greater danger. We disagree. This Court has held that the moving of a victim to a different room away from other persons supports a finding the victim was moved to a place of greater danger. See, e.g., *People v Hack*, 219 Mich App 299, 313; 556 NW2d 187 (1996).¹ Here, the evidence showed that defendant ordered the complainants to lay face down on the ground in a back room. Clearly, the confined and private environment inside the back room was a place of greater danger than the main shopping area of the store. The evidence supports the trial court's scoring of OV 8.

Defendant's argument that his sentence is outside the guidelines range is predicated on the assumption that the trial court improperly scored offense variables 1, 2, and 8. However, we have concluded that there was no error in the scoring of the guidelines' variables, and therefore defendant's sentence is within the guidelines' range. MCL 769.34(10) provides, in relevant part, that "[i]f a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in the scoring of the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence."

Affirmed.

/s/ Jessica R. Cooper
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly

¹ *Hack, supra*, interpreted OV 5 [victim was carried away or held captive] of the offense variables for criminal sexual conduct offenses under the judicial sentencing guidelines. Offense variable 5 of the judicial sentencing guidelines and OV 8 of the statutory sentencing guidelines have the same standards for the scoring of points.